



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 6, 1998

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
DeWitt C. Greer State Highway Building
125 E. 11th Street
Austin, Texas 78701-2483

OR98-0040

Dear Ms. Wright:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111486.

The Texas Department of Transportation (the "department") received a request for an investigation report concerning flooding on FM 3490. You assert that the report at issue is related to reasonably anticipated litigation and thus is excepted from disclosure under section 552.103(a) of the Government Code. The records at issue were submitted to this office for review.

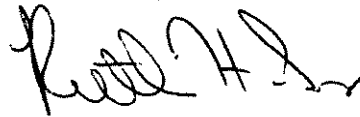
To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a). The information you submitted shows that a property owner in the FM 3490 area contends that his property is flooded and that the department is responsible for the flooding. Further, the property owner has hired an attorney. The attorney alleges her client's property has been damaged and has threatened suit against the department. Litigation has been found to be reasonably anticipated when an individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 (1990) at 2. We agree that the department has shown that litigation is reasonably anticipated. Also, our review of the report indicates that it is related to the anticipated litigation. Thus, you may withhold the report for which you assert the section 552.103(a) exception.

In making this determination, we assume that the opposing party in the anticipated litigation has not already seen the report. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that

information. Open Records Decision Nos. 349 (1982), 320 (1982). Also, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 111486

Enclosures: Submitted document

cc: Ms. Camille E. Hailey
2700 E. Bypass, Suite 5300
College Station, Texas 77845
(w/o enclosures)